

35

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1764/90.

Date of decision 17.5.94.

HON'BLE SHRI N.V. KRISHNAN, VICE-CHAIRMAN (A)

HON'BLE SHRI B.S. HEGDE, MEMBER (JUDICIAL)

Shri M.M. Aggarwal,
Ex-Joint General Manager,
Ordinance Factory, Moradnagar.
R/o Qr.No. I/II/IV U.P.H.C.
Sector 30, NOIDA-201303.

... Applicant

(By Advocate Shri R.P. Oberoi)

versus

1. Union of India
(Through the Secretary,
Deptt. of Defence Production (Supplies)
Ministry of Defence, South Block,
New Delhi-110 011.

2. The Chairman-cum-Director General
Ordinance Factory Board,
10-A, Auckland Road,
Calcutta-700001.

... Respondents

(By Advocate Mrs. Raj Kumar Chopra)

O_R_D_E_R

[Hon'ble Shri B.S. Hegde, Member (Judicial)]_7

The applicant in this O.A. is aggrieved by the non-release of pension and other terminal benefits. The brief facts of the case are, that the applicant joined the Indian Ordinance Factory Service on 15.4.1964 as Class I Officer and he states that he has completed 20 years of qualifying service on 14.4.1984. In the year 1986, the applicant was transferred from from OFB Headquarters at Calcutta to Ordinance Factory, Muradnagar as Joint General Manager. He states that his posting in

..

Muradnagar Factory was not liked by the General Manager of the Factory and he recommended cancellation of the posting order. He worked in the Muradnagar Factory for a period of two years and on 28.9.88, he was again transferred from Muradnagar to Metal and Steel Factory Ishapur (West Bengal). As against the aforesaid transfer order, the applicant submitted a representation (Ann.II) dated 3.10.1988 to Respondent No.2 against his transfer and requested that in case the transfer was to be made, the applicant could be posted either to Ordnance Factory Cell at New Delhi or any one of the nine other establishments of Ordnance Factories in the State of Uttar Pradesh. In that representation, he has further stated that if his request for posting in any of the mentioned places is not acceded, he would be left with no other alternative but to seek voluntary retirement. He also annexed with the representation a letter dated 3.10.1988 addressed to the President of India seeking voluntary retirement. However, the -applicant withdrew the offer of voluntary retirement vide his letter dated 21.11.1988 (Ann.R-1) which request has been accepted by the Respondents. The applicant has been further told to go on transfer to Calcutta vide Respondent's letter dated 21.12.1988 once again. Again the applicant made a representation to the President of India vide his letter dated 1.5.1989 (Ann.III)

37

through the Chairman, Ordinance Factory Board wherein he again repeated his earlier request for modification of the transfer order and stated that if the respondents are not able to accommodate him in the matter, he would not be able to continue further. He, therefore, sought retirement from service on account of above reasons/ family consideration and requested that this letter may be treated as a formal notice as per rules. In this connection, he addressed a letter to the Chairman and Director General, Ordinance Factory vide his letter dated 28.8.89 (Ann IV) stating that the notice period of 3 months of voluntary retirement expired on 31.7.89 and no communication had been received from the authorities ; as such his voluntary retirement became effective w.e.f. 31.7.89. Accordingly, he requested the competent authority to release the retirement benefits i.e. pension, commutation pension, gratuity etc.

2. The respondents vide their letter dated 29.8.89 (Ann.V) in reply to his earlier representation dated 1.5.1989 again reiterated that he should report to General Manager, Metal and Steel Factory, Ishapur as already ordered. His request for voluntary retirement was a conditional one and, therefore, cannot be considered. In case, the applicant still desired to seek voluntary retirement, he may submit fresh notice for voluntary retirement without any pre-condition. This was reiterated in the letter dated 19.12.89 (Ann.VII) in reply to the Ann.IV letter of the applicant. Pursuant to this reply

of the respondents, the applicant vide his letter dated 1.1.90 (Ann.VIII) submitted a notice for voluntary retirement from service under Rule 48-A of CCS(Pension) Rules, 1972. This was enclosed to a letter/ to the ^(Ann.IX) Chairman, Ordnance Factory Board who was requested to get it accepted. It was also added that this was without prejudice to his earlier request/application. The first Respondent (i.e. Department of Defence Production Supplies) vide letter dated 30th March, 1990, informed the applicant that his application dated 1.1.90 seeking voluntary retirement had been received on 2.2.90 and as such notice period would start from that date (Ann.I). In pursuance of that, the applicant vide his letter dated 30.4.90(Annexure-XI) to the Chairman and Director General, Ordnance Factory pointed out that notice period of 3 months for voluntary retirement had expired long back treating his notice period from 1.1.90 and as no communication has been received from the authorities regarding acceptance/rejection of his request the voluntary retirement became effective on expiry of that notice and requested for release of pension dues. He reiterated this request/with reference ^{on 25.6.90 (Ann.XII)} to the Ann.I letter of first respondent and pointed out that even taking 2nd Feb., 1990 as the commencement of the notice, the voluntary retirement had become effective from 1.5.90 and hence he requested for release of pensionary benefits.

3. The applicant has also stated that a disciplinary proceeding has been initiated against him on 8.5.89.

4. Since his request has not been acceded to by the respondents, he prayed for the following reliefs:-

- A (i) To quash Memorandum No.1320/A/G dated 29.8.89(Ann.V) issued by the Respondent No.2.
- (ii) To quash Memorandum No.1320/A/G dated 18.12.89(Ann.VII) issued by Respondent No.2.
- (iii) To quash Memorandum No.1320/A/G dated 30.3.90(Ann-1) issued by Respondent No.2

B

Issue appropriate orders, directions and /or instructions to the Respondents to:-

- (i) immediately sanction pension due to the applicant consequent to his voluntary retirement having become effective w.e.f. 31.7.1989.
- (ii) release other retiral benefits due to the applicant i.e. gratuity, commutation of pension, provident fund, leave salary, Group Insurance money etc.as may be admissible to the applicant under the rules.
- (iii) cancel the disciplinary proceedings initiated against the applicant and to annul the order dated 24.7.90 (Ann.XVIII) regarding appointment of enquiry authority and also to direct the said enquiry authority to stay all further proceedings in the said

enquiry and to treat the matter as closed.

- C award interest @ 18% p.a. to the applicant on the payments which had become due to the applicant and which have been illegally withheld for the period from which the same became due till the date of actual payment.

5. An ad interim order was issued on 30.9.90 staying the disciplinary proceedings. which has been cont^uended until further orders on 13.11.90.

6. The Respondents, in their reply, stated that the applicant's transfer from Muradnagar to Ishapur was in public interest and he has drawn T.A. etc., however, he did not join duty. The Respondent have taken the stand that before submission of the notice to retire voluntarily, they have framed a charge on 8.5.89 against the applicant and initiated a departmental enquiry under Rule 14 of the CCS(CCA) Rules, 1965 which is at Annexure-R-2. Therefore, accepting his voluntary retirement pending decision of the departmental proceedings does not arise. The applicant vide his application dated 1.1.90 again submitted a conditional notice for voluntary retirement (Annexure IX and VIII, page 44 and 43 of the application are relevant). Since the notice was conditional one and he had already been informed vide letter No.1320/A/G dated 29.8.89 that his request for voluntary retirement being conditional

41

could not be considered, no action could be taken on his notice. Apart from this, disciplinary proceeding under Rule 14 of CCS(CCA) Rules was also pending against him and as such his request for voluntary retirement has not been acceded to and he was not allowed to retire from service. Since he has not retired from service, question of payment of terminal benefits does not arise. They further contended that the OA is not tenable.

7. The learned counsel for the applicant contends that under Rule 48-A of the Central Civil Service (Pension) Rules, 1972 a Government servant, who has completed 20 years of qualifying service can seek voluntary retirement by giving notice of not less than 3 months to the appointing authority. Where the Appointing Authority does not refuse to grant the permission before expiry of the period specified in the notice, the retirement becomes effective from the date of expiry of the said period. It is not in dispute that the applicant has completed 20 years qualifying service. While deciding to not consider the request dated 1.5.89 of the applicant for voluntary retirement (Ann.III) on the ground that it was conditional as stated in the reply dated 29.8.89(Ann.V), the Respondents should have been fully aware of the departmental proceedings already initiated as per Memorandum of charges dated 8.5.89(Ann.R.2). The Respondents did not then state that voluntary retirement

sought by the applicant could not be considered on the further ground of pending of departmental proceedings. In any case, in reply to the Ann.VIII notice, it was open to the respondents to state that pending disposal of the departmental enquiry proceedings, the request for voluntary retirement cannot be acceded to. He, therefore, prayed that a declaration be given that the applicant is deemed to have retired w.e.f. 2.5.90 i.e. on the expiry of 3 months from 2.2.90 on which date Respondents state that the Ann.A.VIII notice was received.

8. The learned counsel for the respondents, Mrs Raj Kumari Chopra, vehemently opposed the various contentions of the applicant. It is contended that the OA is barred by limitation. The applicant was transferred by the order dated 28.9.88 (Ann.A.1 with rejoinder) He has filed the O.A. on 28.8.90. She pointed out that the applicant had been transferred and he had also drawn T.A. etc. but did not join duty on transfer. Therefore, respondents have initiated disciplinary action against him on 8.5.89 (Ann.A.2) The present OA is filed to escape the consequences of the Departmental enquiry. Further, it is contended that as the notice of voluntary retirement was a conditional one, the same could not be

considered for acceptance as is evident, from Ann.VII letter dated 18.12.1989. Therefore, the question of payment of terminal benefits does not arise she also contends that if the prayers made in the OA (reproduced in para 4 supra) are properly construed, the applicant will not be entitled to any relief. The prayer A(iii) is to quash the O.M. dated 30.3.90(Ann.A.1) of the respondents acknowledging receipt on 2.2.90 of the notice of voluntary retirement dated 1.1.90 (Ann.VII)- The learned counsel says she has no objection to this prayer being allowed and she endorses the prayer. For, if the Ann.A.1 O.M. is quashed, this OA has only to be dismissed because there is no other proof of the service of Ann.VIII notice on the respondents. She also contends that no prayer has been made for any declaration about the deemed retirement and therefore, such an order may not be passed. In any case, voluntary retirement cannot be permitted when a Departmental Enquiry is pending. Lastly, she urged that the applicant cannot circumvent the Departmental Enquiry proceedings. He has to face the enquiry and he can only resort to such proceedings after the final order has been passed.

9. We have carefully perused the records and considered the rival contentions.

10. The prayer for cancelling the Ann.R.2 O.M.

by which Departmental Enquiry proceedings have been initiated does not stand scrutiny. Therefore, this prayer is rejected.

11. Before proceedings further, we would like to consider whether the prayers made regarding voluntary retirement are basically so defective as to render the OA itself meaningless.

12. The O.A. was filed by the applicant himself and not through counsel. By prayers A(i) and A(ii) he has sought to quash the memo dated 29.8.89 dated Ann.V and memo dated 18.12.89(Ann.VII), by which the notice of voluntary retirement dated 1.5.89 (Ann.III) was not considered. The prayer Ann.A.(iii) to quash the O.M. dated 30.3.90(Ann.1) is to be construed in the light of the applicant's representation dated 25.6.90 (Ann.XII) wherein he ventilate his grievance against the Ann.I O.M. as follows:-

" I had given the notice of seeking voluntary retirement from service under Rule 48(A) of the C.S.S. Pension Rules on 1st January, 1990. This notice of three months commenced w.e.f. 1.1.90 but however the date of commencement of the notice was arbitrarily decided by the Department to be 2nd February 1990 vide O/B acknowledgement No. 1350/A/G dated 30.3.90."

The reliefs sought under A (i) and B (ii) make it clear that his grievance is about not giving effect to voluntary retirement as requested by him.

13. In the light of the foregoing, the question for consideration is whether the applicant has a right to a declaration that he is deemed to have voluntarily retired from 2.5.90 and if so what are the consequences thereof.

245

14. It is true that the first notice dated 1.5.89 (Ann.A.III) seeking voluntary retirement was a conditional one. Therefore, the respondents could not accept the conditional notice. The applicant was informed accordingly by the Ann.V letter and told that in case he still desired to seek voluntary retirement he should submit a fresh notice without preconditions. He then submitted the Ann.VII notice dated 1.1.90. That reads as follows:-

" The Honourable President of India,
" New Delhi-110011

Through: Proper Channel.

Subject:- Voluntary retirement under Central
Civil Service (Pension) Rules.

Honourable Sir,

I seek voluntary retirement from service under Central Civil Service (Pension) Rules (Rules-48-A) on account of family consideration/circumstances. This may kindly be treated as formal notice of three months.

I shall be grateful if this is accepted earlier than the prescribed/stipulated notice period as a special case."

We are satisfied that this as an unconditional notice and the respondents were bound to consider it under Rule 48-A of the CCS (Pension) Rules, 1972. The second respondent acknowledged the notice by the letter dated 30.3.90 (Ann.I) stating that the notice had been received in his office on 2.2.90 and as such the 3 months period will start from that date and the matter was being taken up with the first respondent. Yet, admittedly, no reply has been sent to the applicant to this notice.

15. The only defence put up is that a memorandum of charges had been served on the applicant by the O.M. dated 8.5.89 and therefore, it was not necessary to give a reply to the Ann.V notice dated 1.1.90 because request for voluntary retirement is not to be accepted when a govt. servant has been issued a memorandum of charges.

16. We have considered this plea. We notice that there are some decisions of the Govt. of India in regard to Rule 48-A of the C.C.S. Pension Rules, 1972. These are reproduced at page 84 of the Swamy's Compilation 30th Edition. In the guidelines for acceptance of the notice, it is stated that the notice under Rule 48-A may be generally accepted except where disciplinary proceedings are pending against a Govt. servant for imposition of a major penalty" and the disciplinary authority having regard to the circumstances of the case is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case." However, it is further provided that "if it is proposed to accept the notice of voluntary retirement

even in such cases, approval of the Minister incharge should be obtained in regard to Group 'A' and Group 'B' Govt. servants and of the Head of the department in the case of Group 'C' and Group 'D' Govt. servants." In the circumstances, the pendency of a disciplinary proceeding is not an absolute bar in accepting the notice of retirement. In any case, the disciplinary authority was bound to consider whether the charges imposed are of such a serious nature as to warrant the imposition of the penalty of removal or dismissal from service. In that case alone, the notice may not be accepted generally. Even in such a case, if the disciplinary authority so desires, the matter can be referred to the Minister incharge for acceptance of the notice of retirement. Therefore, in case the notice was not proposed to be accepted on the ground of pendency of the disciplinary proceedings, the applicant should have been informed accordingly in reply to the Annexure-VIII notice sent by him.

17. Admittedly, no reply has been sent to Annexure VIII notice dated 1.1.90. Even the replies to the earlier Ann.III notice which were sent after the Departmental enquiry proceedings were initiated

did not state that permission to retire voluntarily was being refused as a Departmental Enquiry is pending. In the circumstances, the applicant is entitled to the benefit of the proviso to Rule 48-A of the C.C.S. Pension Rules, 1972 viz. that the retirement has become effective from the date of the expiry of the period of three months for which notice had been given by the Annexure VIII letter dated 1.1.90. Notice had been received on 2.2.90 (Ann. I) and, therefore, the period of three calendar months would end on 1.5.90. In the circumstances, the applicant is entitled to a declaration that he has voluntarily retired under rule 48-A of the CCS Pension Rules, 1972 w.e.f. 2.5.90.

18. For the foregoing reasons, we are of the view that the main prayer made in the O.A. has to be allowed and accordingly we dispose of this OA with the following declaration/directions/and orders.

- i) We declare that the applicant shall be deemed to have voluntarily retired from service w.e.f. 2.5.90 under the provisions of Rule 48-A of the C.C.S. Pension Rules, 1972 and that, therefore, he is entitled to pensionary benefits on that basis.

- ii) As a disciplinary proceeding is pending against the applicant, the benefit of provisional pension shall be granted to him in accordance with the provisions of rule 9 and rule 69 of the C.G.S. Pension Rules within three months from the date of receipt of this order.
- iii) The prayer to quash the disciplinary proceeding is dismissed and therefore, the interim order is vacated. The respondents are directed to complete the disciplinary proceedings as expeditiously as possible.
- iv) The O.A. is partly allowed, as above, with no order as to costs.

(B.S. Hegde)
Member(J)
Camp: New Delhi

17.5.74
(N.V. Krishnan)
Vice Chairman(A)